

White Collar Defense

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Judge Rakoff Takes Aim at ‘Trial Penalty’

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On March 10, 2025, U.S. District Judge Jed S. Rakoff of the Southern District of New York issued a decision in the case of *United States v. Tavberidze*, finding Section 3E1.1(b) of the United States Sentencing Guidelines violated the Sixth Amendment of the U.S. Constitution. The court ruled that because the section in question reduces a defendant’s offense level when he or she accepts responsibility for the offense and/or pleads guilty, it implicitly penalizes defendants who instead choose to pursue their constitutional right to trial.

- The United States Sentencing Guidelines reduce the offense-level calculation by two points when “defendant clearly demonstrates acceptance of responsibility for his offense,” and a further one point if the defendant pleads guilty early enough so that the government does not have to prepare for trial.¹
- In his decision, Judge Rakoff held that this further one point calculation, at Section 3E1.1(b), is an “unconstitutional penalty imposed on a defendant for exercising his constitutional right to trial,” and that it violates the Sixth Amendment right to trial in at least two ways.²
- The court reasoned that conserving government resources is not an adequate ground for penalizing a defendant for exercising his right to trial—as opposed to the first two points, which at least are predicated on demonstrating genuine remorse.³ The court found it even worse that Section 3E1.1(b) penalizes a defendant merely for taking too long to decide, even if a defendant ultimately waives his right to trial.⁴
- The court reasoned that Section 3E1.1(b) also violates the Sixth Amendment in that it empowers the government, rather than the district court, to determine whether a defendant is entitled to the reduction in offense level, as a district judge can only apply the reduction upon motion of the government.⁵
- The court found it of no moment that district courts are not required to impose sentences within the Sentencing Guidelines ranges, as the Guidelines do in fact play a significant role in sentencing determinations and appellate review.⁶

Defendants facing the decision to waive trial must still contend with the Section 3E1.1(b) consideration until an appeals court adopts Judge Rakoff’s view. In the meantime, this case can at least be cited for support by defendants who are penalized for taking longer to make such a decision.

¹ Sentencing Guidelines §3E1.1.

² *United States v. Tavberidze*, No. 23-CR-585-03 (JSR), 2025 WL 748354, at *2 (S.D.N.Y. Mar. 10, 2025).

³ *Id.* at *4.

⁴ *Id.* at *4.

⁵ *Id.* at *5.

⁶ *Id.* at *5.

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